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8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11
12 MARCIANO PLATA, et al.,

13 *Plaintiffs,*

14 v.

15 ARNOLD SCHWARZENEGGER, et al.,

16 *Defendants.*
17

Case No. C01-1351 TEH

**[ALTERNATE PROPOSED] ORDER
GRANTING RECEIVER'S MOTION
FOR WAIVER OF STATE LAW RE
PHYSICIAN CLINICAL COMPETENCY
DETERMINATIONS**

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19 On April 25, 2007, the Receiver filed his Motion for Waiver of State Law Re Physician
20 Clinical Competency Determinations. The Court issued an order on May 1, 2007, soliciting
21 responses to the Receiver's Motion from the parties and amici curiae SPB and UAPD by May 22,
22 2007.

23 On May 22, 2007, plaintiffs and defendants each filed a statement of non-opposition to
24 the motion, UAPD filed a statement in support of the Receiver's motion, and SPB filed a
25 response in opposition to the Receiver's motion. On June 5, 2007, the Court requested replies to
26 SBP's response to the motion by June 15, 2007.
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1 On June 15, 2007, the Receiver and plaintiffs filed replies to SPB's opposition. On June
2 21, 2007, SPB requested leave to file a response to the Receiver's reply, which the Court granted
3 on June 27, 2007. In the meantime, UAPD filed a response to the Receiver's and plaintiffs'
4 replies. On July 6, 2007, the SPB filed its supplemental opposition to the Receiver's motion.
5 On January 7, 2008, the Receiver filed a Report and Supplemental Memorandum ("Supplemental
6 Memo") in support of the motion.

7 The Court has considered the arguments presented by the Receiver, the parties and amici
8 curiae in support of and in opposition to the motion and good cause appearing, makes the
9 following orders.

10 The Receiver's Motion is GRANTED. Except as modified by this Order, the Receiver
11 may immediately commence implementation of the process for determining both physician
12 privileges to practice in the prisons and continued physician employment with CDCR which is
13 described more fully in the procedures attached as Exhibit 3 to the Receiver's motion. In his
14 Supplemental Memo, the Receiver stipulated to a modification of his proposed procedures so as
15 to permit Administrative Law Judges ("ALJs") employed by the State Personnel Board ("SPB")
16 to preside over the evidentiary hearings described in those procedures, provided that such ALJs
17 have received special training in handling privileging cases. The Court finds the Receiver's
18 stipulation to be reasonable, and hereby adopts it as the Court's Order.

19 The Court finds that the procedures described in Exhibit 3 of the Receiver's Motion are
20 sufficient to protect the rights to procedural due process in employment guaranteed to State-
21 employed physicians under State and Federal law.

22 The Court hereby waives the following State statutes only insofar as they may foreclose
23 the consolidated evidentiary hearing described in Exhibit 3 to the Receiver's Motion for
24 determining physician privileges and continued employment of physicians in the prisons:

25 Government Code § 19574.2 (designates the SPB Hearing Officer as the location to file a
26 petition to compel discovery and states that it shall be an SPB ALJ who makes a decision);
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1 Government Code §§ 19574.5 and 19592.2. (limiting leaves during investigations of
2 misconduct to 15 days);

3 Government Code § 19575 (rendering adverse action final if not appeal to SPB within 30
4 calendar days of their effective date);

5 Government Code § 19576 (authorizing SPB to conduct investigation and hold
6 evidentiary hearings);

7 Government Code § 19578 (authorizing SPB or its representative to hold evidentiary
8 hearings);

9 Government Code § 19581 (limiting issuance of subpoenas to SPB or its authorized
10 representative);

11 Government Code § 19582 (authorizing SPB or its authorized representative to conduct
12 evidentiary hearings, dismiss charges, prepare proposed decisions, adopt proposed decisions and
13 take alternative action);

14 Government Code § 19583 (providing disciplinary action taken shall stand unless
15 modified or revoked by SPB);

16 Government Code § 19585 (authorizing appeal to SPB after service of a notice of non-
17 cause termination);

18 Government Code § 19587 (authorizing SPB to set matters for rehearing before its
19 representative in response to petitions for rehearing);

20 Government Code § 19590 (authorizing SPB to investigate disciplinary actions and
21 conduct evidentiary hearings); and

22 California Code of Regulations, Title 2, § 51.4 (stating every appeal hearing, including
23 adverse action hearings, shall be open to the public).

24 The SPB is hereby ordered to cooperate fully and promptly with the Receiver to
25 accomplish the Receiver's objectives, including the implementation of the physician clinical
26 competency determination procedures that are the subject of this Order.

1 The Court retains jurisdiction to determine, in a proper case, whether a waiver of Article
2 VII, Section 3(a) of the State constitution is required to implement fully the Receiver's
3 procedures. In the event that the Judicial Review Committee ("JRC") described in the
4 Receiver's procedures determines that a physician's privilege to practice medicine in the prisons
5 should be revoked in a particular case; despite that determination, the SPB orders that the
6 physician be reinstated and permitted to resume practicing medicine in the prisons; and, the
7 Receiver declines to so reinstate the physician or permit the physician to resume the practice of
8 medicine in the prisons, then either SPB or the Receiver may seek a determination from this
9 Court as to whether the Receiver requires a waiver of Article VII, Section 3(a) of the State
10 constitution before he may lawfully decline to reinstate the physician or to permit the physician
11 to resume the practice of medicine in the prisons.

12
13 Dated: _____

By: _____
Thelton E. Henderson
United States District Court

CERTIFICATE OF SERVICE

The undersigned hereby certifies as follows:

I am an employee of the law firm of Futterman & Dupree LLP, 160 Sansome Street, 17th Floor, San Francisco, CA 94104. I am over the age of 18 and not a party to the within action.

I am readily familiar with the business practice of Futterman & Dupree, LLP for the collection and processing of correspondence.

On January 7, 2008 I served a copy of the following document(s):

**[ALTERNATE PROPOSED] ORDER GRANTING RECEIVER'S
MOTION FOR WAIVER OF STATE LAW RE PHYSICIAN CLINICAL
COMPETENCY DETERMINATIONS**

by placing true copies thereof enclosed in sealed envelopes, for collection and service pursuant to the ordinary business practice of this office in the manner and/or manners described below to each of the parties herein and addressed as follows:

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— BY FACSIMILE: I caused said document(s) to be transmitted to the telephone number(s) of the addressee(s) designated.

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25 Dated: January 7, 2008


 Lori Dotson